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OFFICE OF PETITIONS

In re Application of :
Clague et al. :
Application No. 10/826,994 : **DECISION ON PETITIONS**
Filed: April 19, 2004 : **UNDER 37 CFR 1.78(a)(3) AND (a)(6)**
Attorney Docket No. P-21018.00 :

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed August 6, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED** as inappropriate.

The petition under 37 CFR 1.78(a)(6) is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

With respect to the petition under 37 CFR 1.78(a)(3), the reference has been reviewed and determined to be improper. 35 U.S.C 120 permits an applicant to claim the benefit of the earlier filing date of a prior-filed nonprovisional application. In this case, the instant application was filed on July 29, 2004. Both the amendment and Office records support a conclusion that the referenced application no. 11/047,026 was filed on January 31, 2005, and thus, is a later-filed application. As such 35 U.S.C. 120 and 37 CFR 1.78 do not apply.

With respect to the petition under 1.78(a)(6), the petition does not comply with item (1). This pending nonprovisional application was filed on April 19, 2004, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/548,438, which was filed on February 27, 2004 and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title. However, given the improper reference to the later filed application, the amendment is not acceptable as drafted.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either a signed Supplemental Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

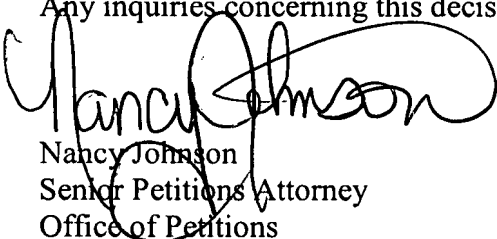
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